

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

FILED
Clerk's Office
USPS - MASS.
Date 06/24/2004
By [Signature]

BRIAN ROGERS,
Plaintiff

MAGISTRATE JUDGE Collings

v.
MORAN TOWING & TRANSPORTATION CO., INC.,
Defendant

) Civil Action
No.

RECEIPT #
AMOUNT \$ 111A

SUMMONS ISSUED 15

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY CLK F.O.M.

DATE 6/24/04

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Now comes the Plaintiff in the above-entitled matter and for his complaint states:

General Factual Allegations

1. The Plaintiff, Brian Rogers, is a resident of Bristol, State of Rhode Island.
2. The Defendant, Moran Towing & Transportation Co., Inc., is a corporation, duly organized and existing under the laws of the State of Connecticut.
3. On or about February 7, 2003 and July 25, 2003, the Defendant, Moran Towing & Transportation Co., Inc., was doing business within the State of Massachusetts.
4. On or about February 7, 2003 and July 25, 2003, the Plaintiff, Brian Rogers, was employed by the Defendant, Moran Towing & Transportation Co., Inc.
5. On or about February 7, 2003 and July 25, 2003, the Plaintiff, Brian Rogers, was employed by the Defendant, Moran Towing & Transportation Co., Inc., as a seaman, and a member of the crew of the TUG JAMES TURECAMO.
6. On or about February 7, 2003 and July 25, 2003, the Defendant, Moran Towing &

Transportation Co., Inc., owned the TUG JAMES TURECAMO.

7. The Defendant, Moran Towing & Transportation Co., Inc., chartered the TUG JAMES TURECAMO from some other person or entity such that on or about February 7, 2003 and July 25, 2003 the Defendant, Moran Towing & Transportation Co., Inc. was the owner pro hac vice of the TUG JAMES TURECAMO.

8. On or about February 7, 2003 and July 25, 2003, the Defendant, Moran Towing & Transportation Co., Inc., operated the TUG JAMES TURECAMO.

9. On or about February 7, 2003 and July 25, 2003, the Defendant, Moran Towing & Transportation Co., Inc., or the Defendant's agents, servants, and/or employees, controlled the TUG JAMES TURECAMO.

10. On or about February 7, 2003 and July 25, 2003, the TUG JAMES TURECAMO was in navigable waters.

11. On or about February 7, 2003 and July 25, 2003, while in the performance of his duties in the service of the TUG JAMES TURECAMO, the Plaintiff, Brian Rogers, sustained personal injuries.

12. Prior to and at the time he sustained the above-mentioned personal injuries, the Plaintiff, Brian Rogers, was exercising due care.

Jurisdiction

13. This Court has subject matter jurisdiction over this matter pursuant to The Merchant Marine Act of 1920, commonly called the Jones Act, 46 U.S.C., §688 et. seq.

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 U.S.C. §1332, and 28 U.S.C. §1333.

COUNT I

Brian Rogers v. Moran Towing & Transportation Co., Inc.

(JONES ACT NEGLIGENCE)

15. The Plaintiff, Brian Rogers, reiterates the allegations set forth in paragraphs 1 through 14 above.

16. The personal injuries sustained by the Plaintiff, Brian Rogers, were not caused by any fault on his part but were caused by the negligence of the Defendant, its agents, servants and/or employees.

17. As a result of said injuries, the Plaintiff, Brian Rogers, has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

18. This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

WHEREFORE, the Plaintiff, Brian Rogers, demands judgment against the Defendant, Moran Towing & Transportation Co., Inc., in an amount to be determined by a Jury, together with interest and costs.

COUNT II

Brian Rogers v. Moran Towing & Transportation Co., Inc.

(GENERAL MARITIME LAW - UNSEA WORTHINESS)

19. The Plaintiff, Brian Rogers, reiterates the allegations set forth in paragraphs 1 through 14 above.

20. The personal injuries sustained by the Plaintiff, Brian Rogers, were due to no fault

of his, but were caused by the Unseaworthiness of the TUG JAMES TURECAMO.

21. As a result of said injuries, the Plaintiff, Brian Rogers has, suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

22. This cause of action is brought under the General Maritime Law for Unseaworthiness and is for the same cause of action as Count I.

WHEREFORE, the Plaintiff, Brian Rogers, demands judgment against the Defendant, Moran Towing & Transportation Co., Inc., in an amount to be determined by a Jury, together with interest and costs.

COUNT III

Brian Rogers v. Moran Towing & Transportation Co., Inc.

(GENERAL MARITIME LAW - MAINTENANCE and CURE)

23. The Plaintiff, Brian Rogers, reiterates all of the allegations set forth in Paragraphs 1 through 14 above.

24. As a result of the personal injuries described in paragraph 11 above, the Plaintiff, Brian Rogers, has incurred and will continue to incur expenses for his maintenance and cure.

WHEREFORE, the Plaintiff, Brian Rogers, demands judgment against the Defendant, Moran Towing & Transportation Co., Inc., in an amount to be determined by a Jury for maintenance and cure, together with costs and interest.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES
RAISED IN COUNTS, I, II, AND III.

Respectfully submitted for the
the Plaintiff, Brian Rogers,
by his attorney,



David F. Anderson, BBO #560994
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
(617) 523-1000

Dated:

6/23/04.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERK'S OFFICE

2004 JUN 24 P 12:49

1. Title of case (name of first party on each side only) Brian Rogers v. Moran Towing
& Transportation Co., Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David F. Anderson
 ADDRESS Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
 TELEPHONE NO. (617) 523-1000

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS
Brian Rogers

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
David F. Anderson, Esquire BBO #560994
Latti & Anderson LLP, 30-31 Union Wharf, Boston, MA 02109
(617) 523-1000

DEFENDANTS

Moran Towing & Transportation Co., Inc.

FILED
CLERK'S OFFICE
2004 JUN 24 P 12:49

U.S. DISTRICT COURT
DISTRICT OF MASS.
(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties IN Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	PTF DEF	PTF DEF
Citizen of Another State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 2 <input type="checkbox"/> 2	<input type="checkbox"/> 5 <input type="checkbox"/> 5
	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 380 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury X Med Malpractice <input type="checkbox"/> 365 Personal Injury X Product Liability <input type="checkbox"/> 368 Asbestos Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PRISONER PETITIONS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS X Third Party 26 USC 7609

V. ORIGIN

[] 1 Magistrate Proceeding Original
 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened Transferred from (Specify) Appeal to District
 5 another district 6 Multidistrict 7 Judge from
 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS X Third Party 26 USC 7609
 872 Agricultural Acts
 892 Economic Stabilization Act
 893 Environmental Matters
 894 Energy Allocation Act
 895 Freedom of Information Act
 900 Appeal of Fee Determination Under Equal Access to Justice Act
 950 Constitutionality of State Statutes
 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS U.S.C., Section 1333) The Merchant Marine Act of 1920, commonly called the Jones Act, 46 U.S.C., Section 688, et seq., 28 U.S.C., Section 1331, 28 U.S.C., Section 1332 and 28

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION **DEMAND \$** **Check YES only if demanded in complaint:** **JURY DEMAND: YES NO**

VIII. RELATED CASE(S) (See Instructions) **IF ANY**

JUDGE _____ DOCKET NUMBER _____
 SIGNATURE OF ATTORNEY OF RECORD *David F. Anderson*